

AFFIDAVIT OF DAVID MAROFSKE

FILED

NOV 18 1981

STATE OF ILLINOIS)  
                                  ) SS.  
COUNTY OF COOK        )

Judge George N. Leighton  
U. S. District Court

DOCKETED

David Marofske deposes and states as follows: **SEP 23 1981**

1. I hold the position of President of Midway Mfg. Co. ("Midway"), plaintiff in this action. I have been employed by Midway, holding various positions, for over 20 years.

2. For at least three years, Midway has been nationally recognized as a leading designer, manufacturer and seller of high quality, coin-operated electronic video games. Midway's coin-operated video games are placed for public use by persons or firms called "operators" in a wide variety of public places, such as arcades, bars, hotels, shopping centers, retail stores and restaurants. Operators profit from the collection of coins deposited in the games by members of the public who play the games.

3. The popularity of coin-operated video games has dramatically increased since 1978, when Midway introduced the SPACE INVADERS video game to the United States. In contrast to a limited production run of about 2,000 units for some video games, Midway manufactured and sold over 50,000 coin-operated SPACE INVADERS video games in the years 1978 and 1979, an amount which was unprecedented in the history of video game sales. Following

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410

its SPACE INVADERS success, Midway introduced the GALAXIAN video game to the United States in late 1979, and sold over 40,000 GALAXIAN video games.

4. In July 1980, Midway first became aware of a video game called PUCKMAN, which was created by a Japanese company named Namco, Limited ("Namco"). Midway acquired the exclusive rights to market the PUCKMAN video game in the United States from Namco in consideration for substantial advances and royalties. Namco assigned the United States copyright rights in the PUCKMAN video game to Midway. Namco also agreed that Midway could market the game in the United States under the name PAC-MAN.

5. The PAC-MAN video game was unusually unique in concept and design compared with other video games on the market at the time it was introduced by Midway in the United States in October 1980. The PAC-MAN (or PUCKMAN) video game requires the player, using a single handle control, to guide a circular PAC-MAN image about a maze to score points by munching up dots in his path. Ghost monsters chase after the PAC-MAN trying to capture and deflate him. The PAC-MAN can counterattack by eating a big power capsule that enables him to overpower the monsters for additional scores. After all the dots are gobbled up, the screen is cleared, and the PAC-MAN game continues for another round. Audio and musical effects accompany the play of the game. Prior

to the insertion of a coin, the PAC-MAN game operates in a repeating "attract mode" which summarizes the game. The game shifts into the "play" mode when a coin is deposited and the start button is pushed.

6. Midway has extensively advertised and promoted the PAC-MAN video game. Midway distributed thousands of brochures for the game to each of Midway's United States distributors. A copy of the brochure for the PAC-MAN game is attached as Exhibit A. The brochure is in full color, and contains prominent displays of the name of the game and explicit pictorial and graphic representations of the visual elements of the game. These brochures, in turn, are used by the distributor to advertise and promote the new game to the distributor's customers, who are generally operators. Midway used the brochures as advertisements in trade magazines such as RePlay, Play Meter, Vending Times, Market Place and Cash Box, and also sends out press releases concerning the games.

7. Midway has promoted its PAC-MAN game at national and local trade shows. Midway has displayed its PAC-MAN game at such shows, distributed brochures and has also distributed promotional items such as mugs and T-shirts. Such promotional items have also been disseminated to distributors. Midway has also licensed the manufacture and sale of promotional PAC-MAN T-shirts. These items are sold to distributors who use them in promotional activities.

8. Since October 31, 1980, Midway has sold in excess of 75,000 PAC-MAN video games throughout the United States at a wholesale value in excess of \$150,000,000.00. Each PAC-MAN video game sold by Midway contains a notice of Midway's claim of copyright. Midway's name is prominently featured on the cabinet, as is the PAC-MAN trademark.

9. The PAC-MAN video game has achieved widespread popularity among members of the public who play coin-operated video games. The game has been the subject of a substantial number of unsolicited news reports, and has been featured on various television programs, such as NBC News, "Two On Two" broadcast on WBBM television in Chicago, and "20/20", an ABC television show. In addition, Midway has received unsolicited letters from members of the public inquiring about the PAC-MAN video game.

10. Attached as Exhibit B is a copy of an opinion poll entitled "the players' choice" which is published in the November 1981 issue of RePlay Magazine, and which ranks Midway's PAC-MAN video game second among upright video games in earnings in the opinion of operators surveyed by RePlay. RePlay Magazine is widely circulated in the video game industry. This poll is regularly published by RePlay, and the results of the poll are relied upon as a general indication of popularity of a video game by those in the video game industry.

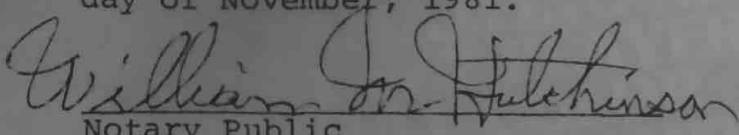
11. Attached as Exhibit C is a copy of the "Playmeter Equipment Poll published by Playmeter Magazine in the November 1, 1981 issue. This poll is published periodically by Playmeter Magazine, which is a trade magazine widely circulated in the coin-operated video game industry. The November 1, 1981 Playmeter poll shows that the average gross collections for the PAC-MAN video game nationwide are \$234.00-\$245.00 weekly.

12. Historically, it has not been possible to predict the popularity of a video game. Particular video games may achieve widespread popularity over a limited period of time, and video games which are popular today may be replaced in popularity by new games which are introduced into the market. Although the PAC-MAN video game has been popular for an inordinate length of time in relation to the history of the video game market, it cannot be predicted how long the PAC-MAN video game will continue to be popular. Thus, Midway considers it to be essential to aggressively market the PAC-MAN video game while it is enjoying its present level of popularity.

13. Midway has granted an exclusive license to Namco in the consumer video products field, with the right to sublicense only to Atari, Inc., <sup>under</sup> the copyright in the PAC-MAN video game.

  
David Marofske

Subscribed and sworn to  
before me this  
day of November, 1981.

  
Notary Public

My Commission Expires: Feb. 28, 1984



Produced by Midway Mfg. Co. under license from Namco Ltd.

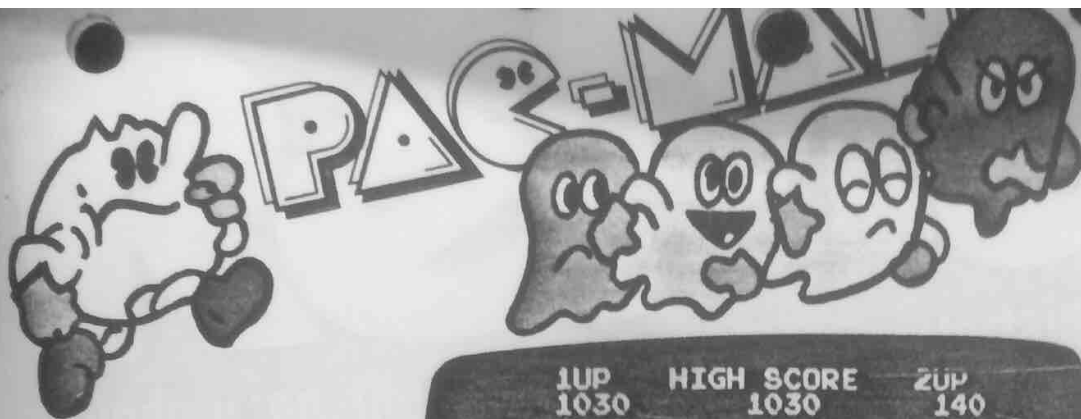
**MIDWAY'S  
AMAZING NEW  
1 or 2 PLAYER  
FULL COLOR  
VIDEO GAME!**



*Exhibit A  
(Front)*

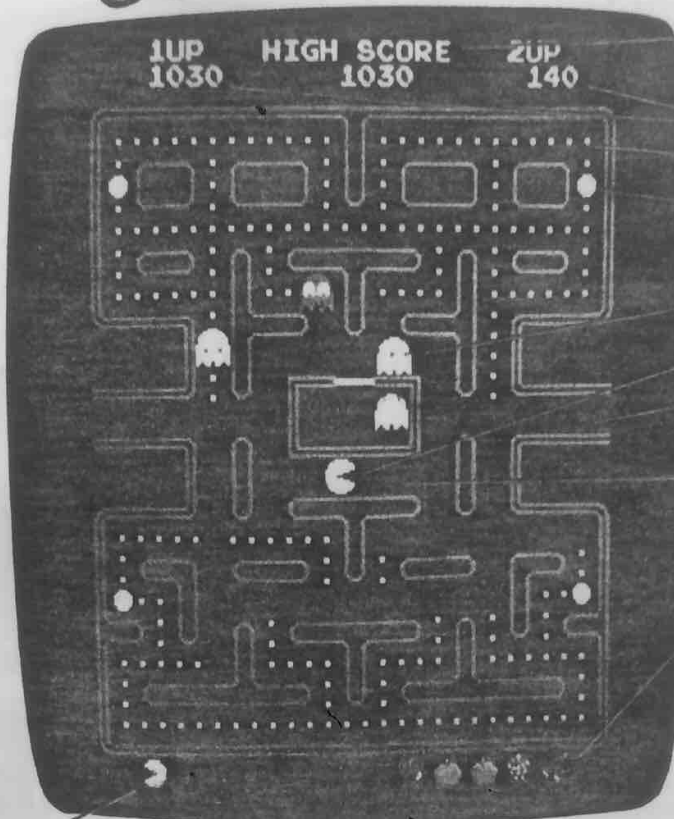






A sensational, full color video game for 1 or 2 players that tickles vision and challenges reflexes. Adding to the fun are musical refrains, cheering and action sounds along with amusing cartoon show between racks.

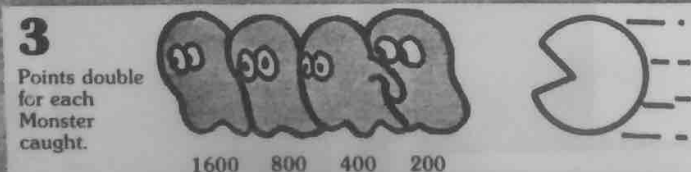
The player, using a single handle control guides the PAC-MAN about the maze, scoring points by munching up the Dots in his path. Four Ghost Monsters—Inky, Blinky, Pinky and Clyde—chase after the PAC-MAN trying to capture and deflate him. The PAC-MAN can counterattack by eating the big, Power Capsule that enables him to overpower the Monsters for additional score. After all the Dots are gobbled up, the screen is cleared, and PAC-MAN continues for another round. Each rack features a special Fruit Target in the maze, which if eaten, earns Bonus Points. Players start with three PAC-MEN. An additional PAC-MAN is awarded for 10,000 points.



PAC-MAN REMAINING

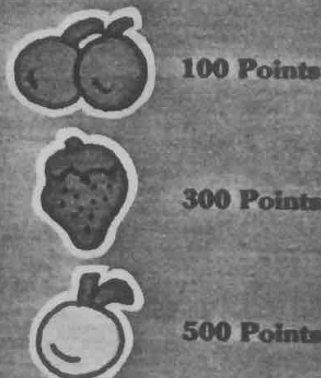
- HIGH SCORE** — Retained displayed daily.
- PLAYERS' SCORE**
- DOTS** — 10 Points Each.
- POWER CAPSULE** — 50 Points Each.
- GHOST MONSTERS**
- PAC-MAN** — The 'main' man
- ESCAPE 'Warp' TUNNEL** — Out one side—reappear on other
- BONUS FRUIT TARGET** — Appear below Monster's Den twice during each rack.
- NUMBER OF SCREENS CLEARED** — Fruit indicates how many times player has cleared the screen of dots.
  - Screen cleared once.
  - Screen cleared twice.
  - Screen cleared 3 times.
  - ? Screen cleared 4 times.
  - ? Screen cleared 5 times.
  - etc. —

### SCORE BIG ON THE COUNTERATTACK



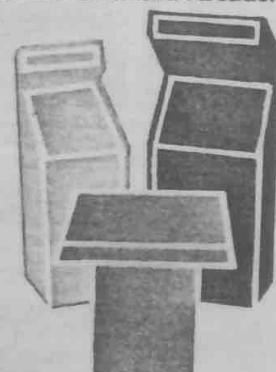
### BONUS POINT FRUIT TARGETS!

The player is awarded extra Bonus Points for eating the Fruit Targets that appear in the maze.



Or up to a maximum of 5,000 Bonus Points.

PAC-MAN is available in 3 Midway models: New Mini-Myte, Cocktail Table and Standard Arcade.



HEIGHT	WIDTH	DEPTH
58 1/2"	19 1/2"	24"
149 cm	49.5 cm	61 cm
29"	32"	22"
74 cm	81.25 cm	56 cm
73"	26 1/4"	34"
185.5 cm	67.25 cm	86.25 cm



**MIDWAY MFG. CO.**

A BALLY COMPANY  
10750 West Grand Avenue  
Franklin Park, Illinois 60131  
Phone: (312) 451-1360  
For service information—call toll free 800-323-7182

DISTRIBUTED BY:

Exhibit A  
(back)

# Replay

PRICEY FOR  
window on the world of coin-op entertainment

*adk*



Exhibit B  
page 1 of 2

1981 AMOA EXPO SPECIAL  
Video, video everywhere . . . and now on new Seeburg



# the players' choice

Exhibit B  
page 2 of 2

TOP FLIPPERS AND VIDEO UPRIGHTS NOW IN OPERATION. POSITIONS ARE BASED ON AN EARNINGS-OPINION POLL OF STREET AND GAME CENTER OPERATORS IN THE UNITED STATES CONDUCTED BY REPLAY MAGAZINE.

## The National Powerpack

### FLIPPERS

	MODEL/MANUFACTURER	INDEX	DIST.
	1 8-BALL DELUXE (Bally)	90.00	50%
◆	2 BLACK HOLE (Gottlieb)	90.00	25%
	3 BLACK KNIGHT (Williams)	82.03	80%
	4 XENON (Bally)	81.52	58%
◆	5 VOLCANO (Gottlieb)	78.85	33%
	6 MARS (Gottlieb)	73.21	35%
	7 FIREBALL II (Bally)	68.75	30%
	8 FLASH GORDON (Bally)	68.48	58%
	9 SPACE INVADERS (Bally)	68.00	63%
	10 FIRE POWER (Williams)	67.74	78%
	11 ALIEN POKER (Williams)	67.19	40%
	12 BLACKOUT (Williams)	66.67	53%
	13 JUNGLE LORD (Williams)	63.33	38%
	14 SUPERMAN (Atari)	57.14	53%
	15 LIGHTNING (Stern)	56.82	28%
	16 SILVERBALL MANIA (Bally)	56.52	58%
	17 PLAYBOY (Bally)	54.31	73%
	18 FLASH (Williams)	51.72	73%
	19 STELLAR WARS (Williams)	51.67	38%
	20 GORGAR (Williams)	50.00	60%

### UPRIGHT VIDEOS

	MODEL/MANUFACTURER	INDEX	DIST.
◆	1 DEFENDER (Williams)	99.34	90%
◆	2 PAC-MAN (Midway)	98.17	98%
◆	3 CENTIPEDE (Atari)	91.89	88%
◆	4 DONKEY KONG (Nintendo)	89.06	38%
	5 ASTEROIDS (Atari)	89.02	98%
◆	6 OMEGA RACE (Midway)	86.96	55%
◆	7 FROGGER (Gremlin)	85.42	29%
◆	8 VANGUARD (Centuri)	85.29	40%
◆	9 SPACE FURY (Gremlin)	85.00	36%
	10 MONACO UPRIGHT (Grem./Sega)	83.33	29%
	11 SUPER COBRA (Stern)	81.82	52%
	12 GORF (Midway)	80.88	81%
◆	13 WIZARD OF WOR (Midway)	79.76	50%
	14 SCRAMBLE (Stern)	79.73	88%
	15 PHOENIX (Centuri)	78.45	69%
	16 BERZERK (Stern)	77.94	81%
	17 GALAXIAN (Midway)	76.87	95%
	18 ASTEROIDS DELUXE (Atari)	72.66	76%
	19 PLEIADES (Centuri)	70.59	40%
◆	20 SPACE ODYSSEY (Gremlin)	70.00	36%

## New Performers

### FLIPPERS

- ◆ 1 SPLIT SECOND (Stern)
- ◆ 2 FATHOM (Bally)
- ◆ 3 SOLAR FIRE (Williams)

### UPRIGHT VIDEOS

- ◆ 1 QIX (Taito America)
- ◆ 2 COSMIC AVENGER (Universal)
- ◆ 3 RED ALERT (GDI)

◆ this indicates that the machine is available brand new at certain distributors.

INDEX: Operators were asked to rate their game models in this fashion: 4 points for "excellent earnings," 3 points for "good," 2 points for "fair" and 1 point for "filler." All value points assigned to specific models were added up, multiplied by 25 and divided by the actual number of operator votes per-game — reaching an INDEX as its most excellent peak.

DIST: The percentage of the surveyed operators who have the item on location. No machines rated by less than 25% of these operators appear in the National Powerpack, but several promising new items appear under New Performers.

# PLAY METER

Volume 7, Number 20

November 1, 1981

VOLLEYS ON THE IN  
ARE FIRED BY LOCAL  
LOCATION CONTRACTS. THE  
NEW VIDEO

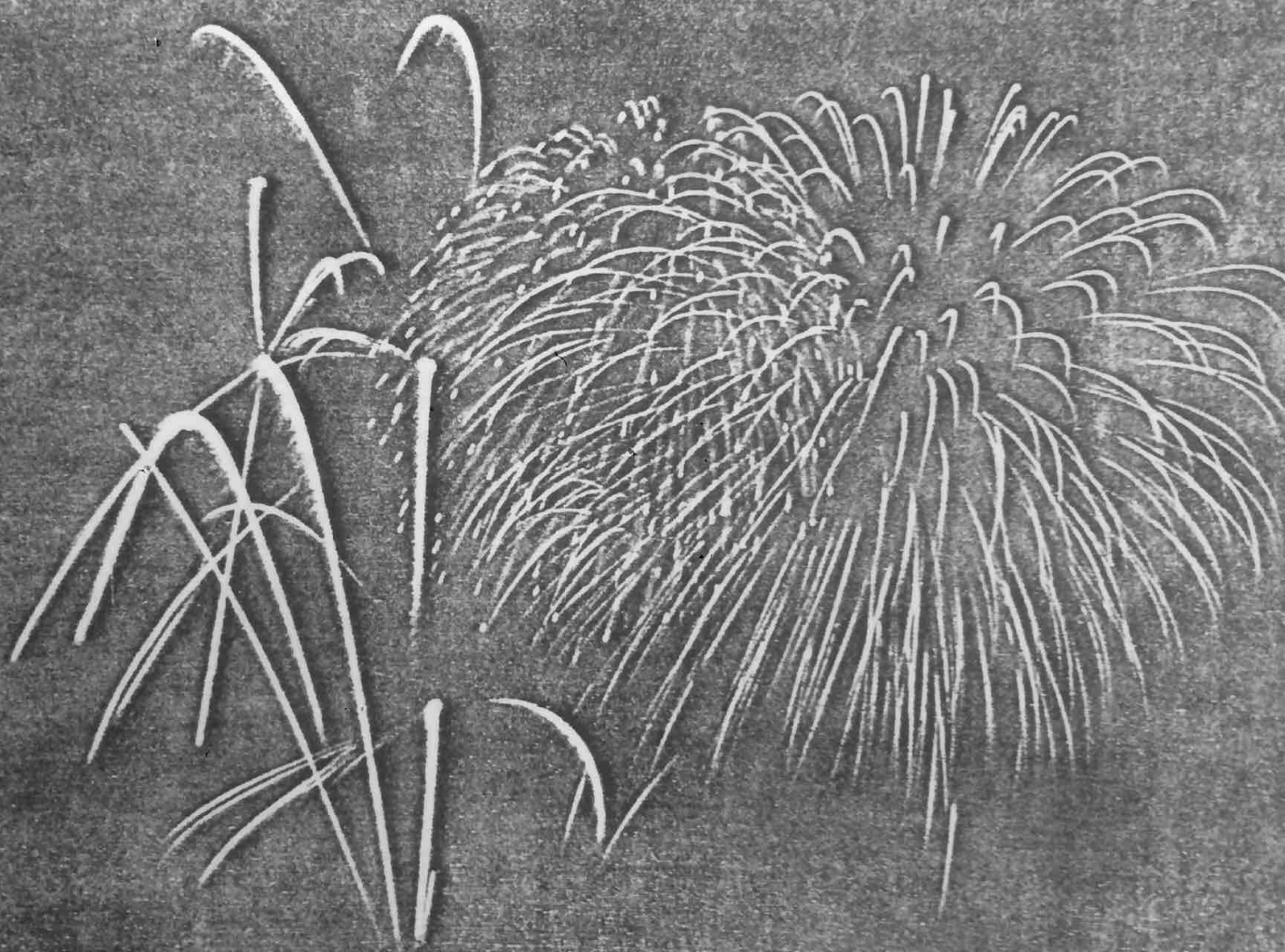


Exhibit C  
page 1 of 2

# Play Meter Equipment Poll

The following are rankings of the top videos and top pinballs making above average weekly gross collections nationwide. The dollar amounts appearing are the average weekly grosses as reported to Play Meter magazine through regular national operator survey, including both arcade and street locations. Games with less than adequate response (less than fifty percent) but with above average collections are so noted. Games not appearing on the poll either (1) did not generate over a ten percent response rate to provide an adequate representative sampling or (2) did not register weekly collections above the national average. Special note should be made that these earnings figures are gross revenues. When computing operator revenues, these amounts should be reduced by fifty percent to reflect the most widespread industry practice, that of granting fifty percent commissions to the location owners.

## TOP PINBALLS

Eleven of 17 pinballs (65%) with a response rate over ten percent have above average earnings.

National average for pinballs ..... Sept. 9 \$117 Sept. 22 \$113

* 1. EIGHT-BALL DELUXE/Bally	\$148	\$143
* 2. LIGHTNING/Stern	—	\$124
* 3. MARS/Gottlieb	\$134	\$123
* 4. PHARAOH/Williams	\$137	\$118
* 5. JUNGLE LORD/Williams	—	\$117
* 6. BLACK KNIGHT/Williams	\$131	\$114

Exhibit C  
page 2 of 2

## TOP VIDEOS

Twenty of 30 videos (67%) with a response rate over ten percent have above average earnings.

National average for videos ..... Sept. 9 \$193

1. DEFENDER/Williams	\$267
2. CENTIPEDE/Atari	\$243
* 3. OMEGA RACE/Midway	\$270
* 4. SUPER COBRA/Stern	\$235
5. PAC-MAN/Midway	\$245
* 6. WIZARD OF WOR/Midway	\$212
7. SCRAMBLE/Stern	\$208
8. GORF/Midway	\$211
9. PHOENIX/Centuri	\$203
10. ASTEROIDS/Atari	\$209
* 11. PLEAIDES/Centuri	\$217
* 12. ARMOR ATTACK/Cinematronics	—

\* Conditionally Rated— Weekly average based on less than 50% response rate

## Provisionally Rated Pinballs and Videos

(Above average earning games, with a response rate between 10—25%)

### PINBALLS

Provisional Ratings	Sept. 9	Sept. 22
ENTHOM/Bally	—	\$164
SPIT II SECOND/Stern	—	\$158
ATLANTA/Bally	\$122	\$159
THE FLAT/Stern	—	\$110
EMERSON/Bally	\$131	\$123

### VIDEOS

Provisional Ratings
DONKEY KONG/Nintendo
YAWK/Atari
SPACE INVADERS/Atari
ASTEROIDS/Atari